



POLICE DEPARTMENT

September 07, 2007

MEMORANDUM FOR: POLICE COMMISSIONER

Re: Sergeant Beatrice Moore
Tax Registry No. 914143
30 Precinct Detective Squad
Disciplinary Case No. 82341/06

The above-named member of the Department appeared before me on May 22, 2007 charged with the following:

1. Said Sergeant Beatrice Moore, assigned to the 45 Precinct Detective Squad, while off duty, on or about and between March 5 and March 6, 2006, did wrongfully engage in conduct prejudicial to the good order, efficiency, and discipline of the Department, to wit: said sergeant caused a public disturbance inside [REDACTED] in Hialeah, Florida when she used profanity towards an individual, identity known to the Department. *(As amended)*

P.G. 203-10 Pg. 1, Para. 4 -- PUBLIC CONTACT -- PROHIBITED CONDUCT

2. Said Sergeant Beatrice Moore, assigned to the 45 Precinct Detective Squad, while off duty, on or about and between March 5 and March 6, 2006, did wrongfully engage in conduct prejudicial to the good order, efficiency, and discipline of the Department, to wit: said sergeant was unfit for duty in that she was observed at a bar for a period of time consuming several alcoholic beverages and subsequently became incoherent, causing her to be removed to a local hospital for treatment. *(As amended)*

P.G. 203-10 Pg. 1, Para. 4 -- PUBLIC CONTACT -- PROHIBITED CONDUCT

The Department was represented by Michelle Alleyne, Esq., Department Advocate's Office, and the Respondent was represented by Eric Sanders, Esq.

The Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty as charged.

EVIDENCE

The Department's Case

The Department called Lieutenant Marvin Kenner as its sole witness.

Kenner, a 20-year member of the Department currently assigned to the Chief of Detectives Investigations Unit, investigated allegations of misconduct involving the Respondent. He explained that at approximately 10:00 p.m. on March 5, 2006, the Respondent became involved in an altercation with Lieutenant Jeremy McIntyre of the Hialeah (Florida) Police Department. The Respondent was on vacation in Florida at the time, and the altercation took place in the emergency room at [REDACTED]. During the course of his investigation, Kenner interviewed McIntyre. McIntyre stated in the interview that he first observed the Respondent as she was brought into the emergency room on a stretcher and placed in an emergency room cubicle. McIntyre told Kenner that shortly thereafter, he responded to the emergency room lobby, where an elderly woman had complained to a security guard that she was pushed by the Respondent. The elderly woman did not remain at the scene. McIntyre approached the Respondent, who identified herself to McIntyre as a member of this Department. The

Respondent produced her shield and Department Identification Card ("I.D. Card") at McIntyre's request. McIntyre gave the shield and I.D. Card back to the Respondent and then went to the cubicle area to ask a nurse about the Respondent. According to McIntyre, the nurse informed him that the Respondent had been receiving medical treatment but then disconnected herself from intravenous medication ("IV") and exited the cubicle area. McIntyre then approached the Respondent a second time and asked again to see her shield and I.D. Card. According to McIntyre, when he walked to the desk area to make a telephone call to verify the Respondent's status with this Department, the Respondent started to make a scene. McIntyre told Kenner that the Respondent attempted to snatch the shield and I.D. Card out of his hands. In addition, according to McIntyre, the Respondent yelled at him to give her the shield and I.D. Card back, called him an asshole, and made a reference to the fact that he is black. McIntyre told Kenner that the Respondent was very loud and was causing a disruption. McIntyre instructed the Respondent to calm down and back away from him. The Respondent did not comply and successfully grabbed the shield and I.D. Card away from McIntyre. At that point, McIntyre informed the Respondent that he was going to place her under arrest. McIntyre told Kenner that when he attempted to place handcuffs on the Respondent, the Respondent initially struggled. McIntyre was dressed in full police uniform at the time. McIntyre told Kenner that the Respondent seemed intoxicated during the incident. McIntyre explained to Kenner that the Respondent had blurred vision, bloodshot eyes, and alcohol on her breath. In addition, according to McIntyre, the Respondent was unsteady on her feet and slurred her speech.

During the course of his investigation, Kenner also interviewed Nurse [REDACTED], a nurse who was present in the emergency room at the time of the incident. [REDACTED] told Kenner that the Respondent was brought into the hospital on a stretcher. According to [REDACTED] the Respondent was conscious at the time but was very lethargic and not responsive at all. Because the Respondent smelled of alcohol and slurred her speech, [REDACTED] concluded that the Respondent was intoxicated. Kenner testified that although he did not know how much personal interaction [REDACTED] had with the Respondent, two other nurses (Nurse [REDACTED] and Nurse [REDACTED]) confirmed [REDACTED]'s observation that the Respondent smelled of alcohol and slurred her speech. Kenner stated that as far as he knew, the Respondent did not receive any medical treatment after she was arrested. After her arrest, the Respondent was transported from the hospital by Police Officer Gil. In a telephone interview, Gil told Kenner that he smelled alcohol on the Respondent and that the Respondent was clearly intoxicated but calm in her demeanor. The Respondent was charged with disorderly intoxication. The criminal case against the Respondent was ultimately dismissed for insufficient evidence.

[Department's Exhibit 1 is a copy of an Emergency Department Flowsheet prepared by [REDACTED]. According to the form, the Respondent arrived at the hospital at 9:15 p.m. and appeared to be intoxicated. The Respondent admitted at the time to drinking since early in the day. The next and final entry on the sheet is at 10:00 p.m. which states, "Patient not in room, found in lobby, asked to come back inside. Patient had removed cardiac monitor leads and IV access." At that time, the Respondent refused further medical treatment.]

Kenner testified that the Respondent was the subject of two Official Department Interviews. In the first interview, dated July 31, 2006, the Respondent informed Kenner that on March 5, 2006, she was vacationing in a resort in Florida. She told Kenner that at approximately 12:00 p.m. that day, she went to the resort bar and had "a few drinks." Kenner testified that the Respondent specifically stated at the time of her arrest that she had had five drinks, including one that was purchased for her by someone else. The Respondent told Kenner in the interview that while at the bar between 12:00 p.m. and 8:00 p.m., she was receiving telephone calls from her command indicating that a serious crime had occurred. At the time, the Respondent was a supervisor in the Bronx Robbery Squad. There were several calls made between the Respondent and her command. Kenner testified that it was not uncommon for a member of the service to be called while on vacation. At times during the eight-hour period, the Respondent stepped away from the bar but remained within the bar area. Between 5:07 p.m. and 7:15 p.m., the Respondent made approximately 21 work-related telephone calls. Kenner stated that as far as the Department is concerned, the Respondent handled the Department business successfully. After the 7:15 telephone call, the Respondent returned to the bar. At approximately 8:00 p.m., one of the hotel managers observed that the Respondent had blacked out and was incoherent. That manager summoned medical assistance. The manager told Kenner that he found the Respondent at the bar alone and there were not many other people in the area. In the manager's opinion, it was highly unlikely that someone had slipped something in the Respondent's drink. The Respondent did not remember being taken to the hospital. She woke up in the emergency room, not knowing

how she got there. The Respondent stated in her interview that she had not eaten all day and was taking [REDACTED]

On cross-examination, Kenner testified that the Respondent's telephone calls were between five and ten minutes in duration. After the Respondent's final call, she consumed two more alcoholic beverages. Kenner did not interview the bartender who served the Respondent or the emergency medical technicians who transported the Respondent from the resort to the hospital. Kenner conceded that the bartender would have been in the best position to know how many drinks the Respondent was served and if anybody offered the Respondent additional drinks. At the time of the incident, McIntyre was not on duty for the Hialeah Police Department, but was working overtime at the hospital. Neither the woman who complained she was pushed by the Respondent nor the security guard who handled that job was ever identified. A toxicology examination was never conducted on the Respondent to determine if she had alcohol or any other substances in her system. Kenner conceded that it can, therefore, only be assumed that alcohol was the cause of the Respondent's condition. Although McIntyre told Kenner that the Respondent resisted arrest, McIntyre made no note of resisting arrest in his arrest paperwork. In addition, McIntyre made no note of being summoned by a security guard to the Respondent's location. [Respondent's Exhibit A is the Arrest Affidavit prepared by McIntyre.] Other than McIntyre, none of the police personnel or hospital staff that had contact with the Respondent that day alleged that the Respondent acted in a belligerent manner. The Respondent told Kenner that a Sergeant Philpot (a chemical specialist with the Hialeah Police Department) suggested to her that someone might have slipped something in her drink. During his investigation, Kenner never

interviewed Philpot. Kenner testified that he learned from Florida State Attorney Randy Levin that the Respondent's criminal case was dismissed for insufficient evidence.

On redirect examination, Kenner reiterated that the Respondent began to act in a belligerent manner as McIntyre was making a telephone call to verify her identity. Kenner testified that, according to medical paperwork, the Respondent was able to respond to basic commands issued by the emergency medical technicians.

The Respondent's Case

The Respondent testified in her own behalf.

The Respondent, a 15-year member of the Department, is currently assigned to the 30 Precinct Detective Squad. In March 2006, she was the commanding officer of the Bronx Transit Robbery Squad. As part of her duties and responsibilities, the Respondent was issued a Department cell phone. She testified that she received Department-related telephone calls while off duty approximately once a week.

The Respondent testified that on March 5, 2006, she was on vacation at a resort in Dade County, Florida. That day, she went to the resort pool at approximately 12:00 p.m. She proceeded to go back and forth between the pool and the bar over the course of the next three hours. She stated that during that period she consumed two or three mimosas, a mixture of champagne and orange juice. According to the Respondent, the bar area was fairly crowded at that time of day. At 3:30 p.m., the Respondent had an appointment at the resort spa. After two hours at the spa, she returned to the bar area, where she ordered another mimosa. It was around that time that she received a telephone call from a

detective in her command about a triple shooting in the Bronx. The Respondent explained that because somebody had gotten shot on the street and then fell down the subway stairs, there was a question of whether or not the case fell under the jurisdiction of the Transit Bureau. Approximately ten minutes later, the Respondent called her supervisor, Inspector Manzollilo. The Respondent and Manzollilo spoke about the incident for five or ten minutes. The Respondent then called Sergeant Flanagan of the 40 Precinct Detective Squad. That telephone call lasted approximately five minutes. It was followed by a series of telephone calls between the Respondent and various members of the service, including lieutenants and a captain. The last telephone call that the Respondent received on the matter was a call from Manzollilo that ended at approximately 7:15 p.m. Nobody that the Respondent spoke with on the telephone suggested that the Respondent was slurring her speech or sounded incoherent.

The Respondent testified that after the last telephone call, she returned to the bar. She was the only woman present at the bar, but approximately eight men were there. She still had half of a mimosa waiting for her at the bar, and she finished it. One of the men at the bar then asked if he could buy her a shot. The Respondent accepted the man's offer but proceeded to take only one sip from the drink because she did not like the way that it tasted. The Respondent stated that the next thing she knew, she was waking up in the hospital with an IV in her arm and an electrocardiograph ("EKG") connected to her chest. The Respondent explained that she has no recollection of anything that took place between sipping her drink at the bar and waking up in the hospital. The Respondent testified that the next thing she realized, there was a black man dressed like a security guard [previously identified as McIntyre] going through her pocketbook, removing her

shield and wallet from the bag. The Respondent stated that when she asked McIntyre what he was doing, he just walked away with her wallet and I.D. Card. At that point, according to the Respondent, she disconnected herself from the IV and EKG, and she proceeded to ask McIntyre, "What are you, an asshole? Why are you going through my stuff?" McIntyre replied, "You know I was off duty on security. You knew that. You called me an asshole. Now you are under arrest for disorderly conduct." The Respondent testified that she then snatched her things out of McIntyre's hand, but she did not touch him. At that point, according to the Respondent, McIntyre identified himself for the first time as a police lieutenant. The Respondent stated that she replied, "I am really sorry. I was unaware you were a lieutenant. I thought you were a security guard stealing my stuff." According to the Respondent, McIntyre responded, "Fuck you. Who do you think you are coming in and cursing at me?" McIntyre then handcuffed her. The Respondent testified that she started crying and did not offer any resistance. According to the Respondent, McIntyre was lying when he told Kenner that a woman complained to a hospital security guard that the Respondent had pushed her. The Respondent apologized to McIntyre multiple times. She was able to walk out to the hospital parking lot without any assistance. At that point, Philpot responded to the scene. In the course of conversation with Philpot, Philpot informed the Respondent that McIntyre hates white people and the New York City Police Department. Philpot told the Respondent that he would try to talk McIntyre into releasing her. At the end of an approximately 30-minute conversation between Philpot and McIntyre, Philpot returned to where the Respondent was standing and informed her that McIntyre did not like her attitude and wanted her to spend a night in jail. Gil then transported the Respondent to Central Booking. On the

way, Gil informed the Respondent that her bail would be set at \$100. When the Respondent asked Gil if she could stop at a bank to get cash, Gil told her that he could not stop because McIntyre wanted her to spend the night in jail. The Respondent did spend the night in jail. The criminal case against the Respondent was ultimately dismissed. Her attorney told her that the case was dismissed because there was no basis for her arrest since a person cannot be arrested just for calling somebody else names.

On cross-examination, the Respondent reiterated that she had two or three mimosas before going to the spa, and she ordered one more mimosa when she returned from the spa. She had only a couple of sips from that drink before she received her first telephone call. At that point, she stepped out of the bar area for approximately a half hour to handle Department business. When she returned to the bar, the Respondent finished the mimosa that she had started earlier and proceeded to order another one. The Respondent then left the bar area again and continued to conduct Department business. After the 7:15 p.m. telephone call with Manzollilo, the Respondent returned to the bar and finished the last drink that she had ordered. It was at that point that a man at the bar ordered her a shot. The Respondent testified that she never saw anybody slip anything in her drink. The Respondent had not eaten anything during the day, and she was on

[REDACTED] The Respondent testified that she had been told by her doctor that she could consume alcohol while on the [REDACTED]

The Respondent testified that she did not recall ever telling [REDACTED] that she did not want medical treatment. In fact, the Respondent stated that she did not recall ever speaking with any of the emergency room nurses. The Respondent recalled interacting with McIntyre for the first time in the emergency room's cubicle area, not in the lobby.

According to the Respondent, she did not disconnect herself from the IV or go out to the lobby until after she observed McIntyre take her shield and I.D. Card. The Respondent stated that she believed that McIntyre was a security guard, and she did not know why he was going through her pocketbook. The Respondent testified that McIntyre fabricated the story that she detached herself from the IV, wandered into the lobby, and pushed a woman. According to the Respondent, she did not see McIntyre make a telephone call to verify her identity. She stated that the nurses confirmed McIntyre's version of the incident because they all worked with McIntyre at the hospital. The Respondent testified that she informed Kenner and the other investigators on her case that Philpot told her McIntyre was racist. She did not, however, mention that fact in any of her Official Department Interviews.

On redirect- examination, the Respondent testified that she gave Philpot's business card to Kenner.

FINDINGS AND ANALYSIS

The Respondent has been charged with engaging in conduct prejudicial to the good order, efficiency, and discipline of the Department by being unfit for duty in that she was observed at a bar for a period of time consuming several alcoholic beverages and subsequently became incoherent, causing her to be removed to the hospital for treatment. The Respondent is also charged with engaging in conduct prejudicial to the good order, efficiency, and discipline of the Department by causing a public disturbance in the hospital when she used profanity toward an individual.

The Respondent, who was on vacation in Florida at the time of the incident, admitted at trial that she did, in fact, become incoherent after consuming five or six alcoholic beverages at a resort bar, was subsequently removed to the hospital for treatment, and called McIntyre an asshole after awaking in the emergency room. She testified, however, that her incoherent state was not caused by an overindulgence of alcohol. She suggested that instead somebody must have slipped a drug in her drink. She went on to explain that the reason she later called McIntyre (a lieutenant with the Hialeah Police Department) an asshole was because she believed he was a hospital security guard who was stealing her shield and wallet from her bag.

In contrast to the Respondent's version of the incident, McIntyre told Kenner that the Respondent appeared intoxicated. According to McIntyre, the Respondent had blurred vision, bloodshot eyes, alcohol on her breath, slurred speech, and was unsteady on her feet. McIntyre's assessment of the Respondent was corroborated by three emergency room nurses and the police officer who transported the Respondent from the hospital to Central Booking. McIntyre, who was in uniform at the time of the incident, also told Kenner that the Respondent became belligerent toward him only when he started to make a telephone call to verify her identity. In response to this version of the incident, the Respondent suggested that McIntyre fabricated these allegations against her because he does not like white people or this Department. Moreover, the Respondent testified that the nurses corroborated McIntyre's version of the incident because they work with McIntyre at the hospital.

While the Respondent provided possible explanations for her conduct, the Court finds her explanations to be somewhat farfetched. For example, the Respondent

suggested that she was the victim of an involuntary drugging, but she failed to present any evidence in support of her claim. This is particularly surprising given that a detective supervisor (such as the Respondent) who believed she was the victim of an involuntary drugging would likely be eager to have the crime thoroughly investigated instead of refusing medical treatment. As for her claim that McIntyre fabricated these allegations against her because he is racist and does not like the Department, it is odd that the Respondent never raised this claim in any of her Official Department Interviews. Because she did not mention this claim at her interview, subsequently raising it at trial only gives the appearance that she adjusted her testimony to avoid liability for her actions.

It is established that hearsay is admissible in administrative proceedings and that a disciplinary finding may rest upon hearsay alone, People Ex. Rel Vega v. Smith, 66 N.Y.2d 130 (1982). In this case, the hearsay statements provided by McIntyre were consistent with the statements provided by Police Officer Gil and the emergency room nurses. Even more convincing, though, the Court simply finds that McIntyre's version of the incident is more plausible than the version provided by the Respondent. Although the Respondent satisfactorily handled important Department business on the telephone less than an hour before she was deemed incoherent by a resort manager, it is not difficult to believe that she was suddenly struck by the effects of the alcohol. After all, she consumed at least five drinks during the course of the afternoon, was taking [REDACTED], and had not eaten anything all day. Similarly, it is not difficult to believe that the Respondent became upset with McIntyre when he decided to verify her identity.

The Respondent must have realized that McIntyre's telephone call could result in this Department finding out about her unfitness for duty.

Accordingly, the Court finds that it was more likely than not that the incident occurred as McIntyre described it. Thus, the Respondent is found Guilty as charged.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on June 30, 1992. Information from her personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found Guilty of engaging in conduct prejudicial to the good order, efficiency, and discipline of the Department by being unfit for duty in that she was observed at a bar for a period of time consuming several alcoholic beverages and subsequently became incoherent, causing her to be removed to the hospital for treatment. The Respondent has also been found Guilty of engaging in conduct prejudicial to the good order, efficiency, and discipline of the Department by causing a public disturbance in the hospital when she used profanity toward McIntyre.

In Disciplinary Case No. 78836/03, a nine-year member of the Department with no prior disciplinary record forfeited 15 vacation days for becoming unfit for duty while off duty after consuming four or five alcoholic beverages on an empty stomach. In Disciplinary Case No. 74746/99, a ten-year member with no prior disciplinary record forfeited 15 vacation days for becoming intoxicated and initiating a dispute with his


girlfriend. For her similar misconduct, the Assistant Department Advocate suggested that the Respondent in the current case also receive a penalty of 15 vacation days.

Based on the above, I recommend that the Respondent forfeit 15 vacation days.

Respectfully submitted,


John Grappone
Assistant Deputy Commissioner – Trials

APPROVED


MAR 24 2009
RAYMOND W. KELLY
POLICE COMMISSIONER